

Article 22.

Distribution.

**§ 28A-22-1. Scheme of distribution; testate and intestate estates.**

After the payment of costs of administration, taxes and other valid claims against the decedent's estate, the personal representative shall distribute the remaining assets of the estate in accordance with the terms of decedent's valid probated will or the provisions of Chapter 29 of the General Statutes or as otherwise lawfully authorized. (1973, c. 1329, s. 3.)

**§ 28A-22-2. Shares of after-born and after-adopted children.**

The share of an after-born or after-adopted child, as provided by G.S. 29-9 and 31-5.5, shall be allotted to the after-born or after-adopted child out of any undeviseed real or personal property, or out of both, if there is enough such undeviseed property for that purpose. If there is no undeviseed real or personal property, or if there is not enough, then the whole of the child's share, or the deficiency, shall be made up from the deviseed real or personal property, or from both. The portion contributed by a devisee shall bear the same ratio to the devisee's devise as the after-born or after-adopted child's share bears to the net estate. (1868-9, c. 113, ss. 108, 109; Code, ss. 1536, 1537; Rev., ss. 138, 139; C.S., ss. 141, 142; 1973, c. 1329, s. 3; 2011-344, s. 4.)

**§ 28A-22-3. Special proceeding against unknown heirs of decedent before distribution of estate.**

If there may be heirs, born or unborn, of the decedent, other than those known to the personal representative and whose names and residences are unknown, before distributing such estate the personal representative is authorized to institute a special proceeding before the clerk of superior court for the purpose of determining who are the heirs of the decedent. All unknown heirs of the decedent shall be made parties thereto and shall be served with summons by publication as provided by G.S. 1A-1, Rule 4. Upon such service being had, the court shall appoint some discreet person to act as guardian ad litem for said unknown heirs and summons shall issue as to such guardian ad litem. Said guardian ad litem shall file answer on behalf of said unknown heirs and the guardian ad litem may be paid for services of the guardian ad litem such sum as the court may fix, to be paid as other costs out of the estate. Upon the filing of the answer by said guardian ad litem all such unknown heirs shall be before the court for the purposes of the proceeding to the same extent as if each had been personally served with summons. Any judgment entered by the court in such proceeding shall be as binding upon said unknown heirs as if they were personally before the court and any payment or distribution made by the personal representative under orders of the court shall have the effect of fully discharging such personal representative and any sureties on the personal representative's official bond to the full extent of such payment or distribution as ordered. (1957, c. 1248; 1973, c. 1329, s. 3; 2011-344, s. 4.)

**§ 28A-22-4. Distribution to nonresident trustee only upon appointment of process agent.**

(a) No assets of the estate of a decedent subject to administration in this State shall be delivered or transferred to a trustee of a testamentary trust or an inter vivos trust who is a nonresident of this State who has not appointed a resident agent for the service of civil process for actions or proceedings arising out of the administration of the trust with regard to such property.

(b) If property is delivered or transferred to a trustee in violation of this section, process may be served outside this State or by publication, as provided by G.S. 1A-1, Rule 4, and the courts of this State shall have the same jurisdiction over the trustee as might have been obtained by

service upon a properly appointed process agent. The provisions of this section with regard to jurisdiction shall be in addition to other means of obtaining jurisdiction permissible under the laws of this State. (1967, c. 947; 1973, c. 1329, s. 3.)

**§ 28A-22-5. Distribution of assets in kind in satisfaction of devises and transfers in trust.**

(a) Subject to the provisions of subsection (b) of this section, whenever under any will or trust indenture the executor, trustee or other fiduciary is required to, or has an option to, satisfy a devise or transfer in trust by a transfer of assets of the estate or trust in kind at the values as finally determined for federal estate tax purposes, the executor, trustee or other fiduciary shall, in the absence of contrary provisions in such will or trust indenture, be required to satisfy such devise or transfer by the distribution of assets fairly representative of the appreciation or depreciation in the value of all property available for distribution in satisfaction of such devise or transfer.

(b) The provisions of subsection (a) of this section shall not apply unless either:

- (1) The decedent's surviving spouse is the beneficiary of the devise or trust transfer described in subsection (a) of this section or of the residue of the estate or trust; or
- (2) Any "skip person", as that term is defined in Chapter 13 of the Internal Revenue Code of 1986, as amended, is or may be a current or future beneficiary of the devise or trust transfer described in subsection (a) of this section or of the residue of the estate or trust, and the value of the decedent's gross estate for federal tax purposes exceeds the value of the decedent's unused generation-skipping tax exemption available under Chapter 13 of the Internal Revenue Code of 1986, as amended. (1965, c. 764, s. 1; 1973, c. 1329, s. 3; 1995, c. 235, s. 5; 2011-284, s. 17.)

**§ 28A-22-6. Agreements with taxing authorities to secure benefit of federal marital deduction.**

The executor, trustee, or other fiduciary having discretionary powers under a will or trust indenture with respect to the selection of assets to be distributed in satisfaction of a devise or transfer in trust to or for the benefit of the surviving spouse of a decedent shall be authorized to enter into agreements with the Commissioner of Internal Revenue of the United States of America, and other taxing authorities, requiring the fiduciary to exercise the fiduciary's discretion so that cash and other properties distributed in satisfaction of such devise or transfer in trust will be fairly representative of the net appreciation or depreciation in value on the date, or dates, of distribution of all property then available for distribution in satisfaction of such devise or transfer in trust. Any such fiduciary shall be authorized to enter into any other agreement not in conflict with the express terms of the will or trust indenture that may be necessary or advisable in order to secure for federal estate tax purposes the appropriate marital deduction available under the Internal Revenue Laws of the United States of America and to do and perform all acts incident to such purpose. (1965, c. 744; 1973, c. 1329, s. 3; 2011-284, s. 18.)

**§ 28A-22-7. Distribution to parent or guardian of a minor.**

(a) If a devise of personal property to a person under the age of 18 has a total value of less than five thousand dollars (\$5,000), and the devisee is residing in the same household with a parent or a guardian appointed prior to the decedent's death, the personal representative may distribute to

the parent or guardian the devise. However, such distribution shall only be made with the prior approval of the clerk of court who issued the letters testamentary or of administration.

(b) If such distribution has been made the parent or guardian shall use the property solely for the education, maintenance and support of the devisee. However, the parent or guardian shall not be required to file an accounting with the clerk of court or to the personal representative, nor shall such distribution be cause for a delay in the filing of the personal representative's final account under the provisions of Article 21 of this Chapter.

(c) Repealed by Session Laws 2014-115, s. 2.3, effective August 11, 2014.

(d) This section may also be applied to several devises of personal property to a single devisee having a combined total value of less than five thousand dollars (\$5,000). (1975, c. 813, s. 1; 2011-284, s. 19; 2014-115, s. 2.3; 2018-40, s. 8.1; 2019-243, s. 28(a).)

#### **§ 28A-22-8. Executor or trustee; discretion over distributions.**

Unless otherwise restricted by the terms of the will or trust, an executor or trustee shall have absolute discretion to make distributions in cash or in specific property, real or personal, or an undivided interest therein or partly in cash or partly in such property, and to do so without regard to the income tax basis for federal tax purposes of specific property allocated to any beneficiary. (1977, c. 740.)

#### **§ 28A-22-9. Distribution to known but unlocated devisees or heirs.**

(a) If there are known but unlocated devisees or heirs of property held by the personal representative, the personal representative may deliver the share of such devisee or heir to the clerk of superior court immediately prior to filing of the final account. If the devisee or heir is located after the final account has been filed, the devisee or heir may present a claim for the share to the clerk. If the clerk determines that the claimant is entitled to the share, the clerk shall deliver the share to the devisee or claimant. If the clerk denies the claim, the claimant may take an appeal as in a special proceeding.

(b) The clerk shall hold the share without liability for profit or interest. If no claim has been presented within a period of one year after the filing of the final account, the clerk shall deliver the share to the State Treasurer as abandoned property.

(c) The clerk shall not be required to publish any notice to such devisee or heir and shall not be required to report such share to the State Treasurer. If the devisee or heir is located, the clerk shall inform the devisee or heir that the devisee or heir is entitled to file a claim with the State Treasurer for the share under the provisions of G.S. 116B-67. (1979, 2nd Sess., c. 1311, s. 2; 2002-62, s. 1; 2011-344, s. 4.)

#### **§ 28A-22-10. Distribution of assets of inoperative trust.**

When the facts at the time of distribution of property to a trust are such that the trust would be inoperative under the terms of the instrument creating the trust for any reason, including the death of a beneficiary, renunciation by a beneficiary, the exercise of a right to withdraw the property by a beneficiary, or the attainment of a stipulated age by a beneficiary, the personal representative or the trustee authorized or required to make the distribution of that property to the trust may distribute the property directly to the person or persons entitled to it under the terms of the instrument creating the trust without the interposition of the establishment of the trust. If only a portion of the trust would be inoperative, the property distributable to that portion of the trust may be distributed directly to the person or persons entitled to the property under the terms of the instrument creating the trust. (2001-413, s. 3.)

**§ 28A-22-11. Agreements with heirs.**

Any agreement by an heir, unknown or known but unlocated, the primary purpose of which is to locate or recover, or assist in the recovery of, a share in a decedent's estate shall be subject to the provisions of Article 4 of Chapter 116B of the General Statutes. (2009-312, s. 3; 2021-157, s. 2(c).)